

# The Financial Supervision Commission

## General Licensing Policy

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## Contents

|                   | Topic   | Page No   |
|-------------------|---|-----------|
|                   | <b>Glossary</b>   | 1         |
|                   | <b>Introduction</b>   | 2         |
| (i)               | General matters   | 2         |
| (ii)              | Exemptions and exclusions from the licensing requirements                 | 2         |
| (iii)             | Licensing requirement   | 2         |
| (iv)              | Application of the licensing policy                                       | 3         |
| (v)               | Other relevant guidance and information                                   | 3         |
| (vi)              | The licence application process and review of decisions                   | 3         |
| (vii)             | Extensions to licences  | 4         |
| (viii)            | Class 4 regulated activities  | 4         |
| <b>Part I</b>     | <b>The Commission's "Fit and Proper" Criteria</b>                         | <b>5</b>  |
| 1.1               | General   | 5         |
| 1.2               | A "not fit and proper" direction  | 6         |
| <b>Part II</b>    | <b>Structure and Organisation of the Licence Applicant</b>                | <b>7</b>  |
| 2.1               | New business start ups and track record                                   | 7         |
| 2.2               | Structure   | 7         |
| 2.3               | Licence applicants which are part of larger groups                        | 8         |
| 2.4               | Licence applicants which are companies under the Companies Act 2006       | 8         |
| 2.5               | Sole traders  | 9         |
| 2.6               | Ownership by a trust  | 9         |
| 2.7               | Branches  | 10        |
| 2.8               | Real presence   | 11        |
| 2.9               | Managed businesses  | 11        |
| 2.10              | Overseas businesses   | 13        |
| 2.11              | Representative offices  | 14        |
| 2.12              | Changes to ownership structure once a licence has been granted            | 14        |
| <b>Part III</b>   | <b>Individuals responsible for Management and Control</b>                 | <b>15</b> |
| 3.1               | Directors, controllers and key persons                                    | 15        |
| 3.2               | Separation of roles   | 15        |
| 3.3               | Responsibilities  | 16        |
| 3.4               | Locums  | 16        |
| <b>Part IV</b>    | <b>Integrity</b>  | <b>17</b> |
| <b>Part V</b>     | <b>Competence</b>   | <b>18</b> |
| <b>Part VI</b>    | <b>Financial Standing</b>   | <b>19</b> |
| 6.1               | Solvency  | 19        |
| 6.2               | Professional indemnity insurance cover                                    | 20        |
| 6.3               | Ongoing requirements  | 20        |
| <b>Appendix 1</b> | Key to Class 3 licensing requirements in the tables A and B of Appendix 2 | 21        |
| <b>Appendix 2</b> | <b>Table A - Ownership and Management Structures</b>                      | <b>22</b> |
|                   | <b>Table B - Track Record</b>   | <b>24</b> |
| <b>Appendix 3</b> | Matters the Commission may have regard to in determining integrity        | 27        |

## Glossary of terms used in this Licensing Policy

|   |   |
|---|---|
| <b>1931 Act company</b>                       | means a company constituted under the <a href="#">Companies Act 1931</a>  |
| <b>2006 Act company</b>                       | means a company constituted under the <a href="#">Companies Act 2006</a>  |
| <b>Anti Money Laundering Code</b>             | means the <a href="#">Criminal Justice (Money Laundering) Code 2008</a>   |
| <b>Commission</b>                             | means the Financial Supervision Commission  |
| <b>Controller</b>                             | means “an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the [applicant/licenceholder] or of another body corporate of which it is a subsidiary” (see <a href="#">Financial Services Act 2008</a> s. 48 for full definition)                    |
| <b>Corporate officer or corporate trustee</b> | means a company whose business consists solely of acting either as a director or secretary or as a trustee (see <a href="#">Financial Services Rule Book 2008</a> for full definitions);  |
| <b>Excluded activities / exclusions</b>       | are activities that do not fall within the scope of the legislation and are therefore outside the remit of the Commission. Details of excluded activities are set out under each class in the <a href="#">Regulated Activities Order 2008</a>   |
| <b>Exempt persons / exemptions</b>            | are individuals or companies that carry on regulated activity but have been exempted from the requirement to hold a licence. Details of exempted activities are set out under each class in <a href="#">the Financial Services (Exemption) Regulations 2008</a>   |
| <b>FSA 2008</b>                               | means the <a href="#">Financial Services Act 2008</a>   |
| <b>Key person</b>                             | means an individual who has, or who appears to the Commission to have, significant powers and responsibility in relation to any regulated activity (see <a href="#">Financial Services Act 2008</a> s. 48 for full definition)  |
| <b>MLRO</b>                                   | means the Money Laundering Reporting Officer  |
| <b>Professional Officer</b>                   | means an individual licensed to carry on regulated activities falling within: <ul style="list-style-type: none"><li>• Class 4 paragraph (6) acting as an officer of a company; and/or</li><li>• Class 5 paragraph (2) acting as trustee (other than sole trustee) in relation to an express trust and/or (5) acting as a protector in relation to an express trust.</li></ul> |
| <b>Regulated activity</b>                     | means an activity specified in the Regulated Activities Order   |
| <b>Regulated Activities Order</b>             | means the <a href="#">Regulated Activities Order 2008</a>   |
| <b>Isle of Man Resident Officer</b>           | means a nominated individual who is an Isle of Man resident director or a key person who has responsibility for overseeing the licenceholder’s proper conduct (see Rule 8.21 of the <a href="#">Financial Services Rule Book 2008</a> for full definition)  |
| <b>Rule Book</b>                              | means the <a href="#">Financial Services Rule Book 2008</a> made under the <a href="#">Financial Services Act 2008</a>  |
| <b>Scheme</b>                                 | means a Collective Investment Scheme  |
| <b>UKFSA</b>                                  | means the UK Financial Services Authority   |
| <b>Vetting Forms</b>                          | include Personal Questionnaires, Role Change Notifications and Police Check Forms. Before completing these forms, reference should be made to the FSC’s Licensing Procedure and Vetting Guidance, which can be found on the FSC’s website under “Becoming a Regulated Entity”   |

## **Introduction**

### **(i) General matters**

This licensing policy is intended to help those who conduct, or wish to conduct, regulated business to understand the Commission's policy in relation to the licensing process.

It is applicable to those seeking or holding a financial services licence to undertake:

- Deposit Taking (Class 1);
- Investment Business (Class 2);
- Services to Collective Investment Schemes (Class 3);
- Corporate Services (Class 4);
- Trust Services (Class 5) ;
- Money Transmission Services (Class 6); or
- Management and Administration Services (Class 7).

The classes of regulated activity are set out in more detail in the Regulated Activities Order.

Unless the context precludes, references to a licence applicant should be construed to apply to a licenceholder.

### **(ii) Exemptions and exclusions from the licensing requirements**

Certain activities and persons which would otherwise be regulated by the Commission can benefit from an exclusion or an exemption from the regulatory regime.

The effect of exclusion means the activity conducted is not considered to be regulated activity. The effect of exemption means that the activity remains regulated activity but can be performed without a licence.

Sometimes exemptions are subject to conditions. In the event that a person undertakes activities outside the exemption, or in contravention of the conditions, the Commission's enforcement powers come into effect. Details of the exemptions are set out under each class in the [Financial Services \(Exemption\) Regulations 2008](#).

### **(iii) Licensing requirement**

A regulated activity can only be conducted by way of business by a licenceholder or a person who is exempt from the requirement to hold a licence (under the legislation detailed at (ii) above). If a person undertakes a regulated activity by way of business without a licence or exemption they commit an offence under section 4 of the FSA 2008.

The Commission is required to exercise its functions, including licensing and supervision, so far as is reasonably practicable in line with the regulatory objectives in section 2(2) of the FSA 2008, which are as follows:

- (a) securing the appropriate degree of protection for the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) supporting the Island's economy and its development as an international financial centre.

**(iv) Application of the licensing policy**

The Commission recognises that the particular circumstances of each licence applicant are not identical. Consequently, the Commission will consider each application on its own merits and will examine on a case-by-case basis all relevant matters relating to a licence applicant. Having examined the circumstances of each case, if there appear to be risks in respect of a particular licence applicant, the Commission may wish to make more extensive enquiries in order to satisfy its concerns and mitigate these risks.

In some cases, where the licence applicant can satisfy the Commission that the risks associated to its business can be addressed in a different way, the Commission may agree to specific modifications to this policy for that person. In other cases, where there is a particular risk, it may be appropriate for the Commission to put additional conditions/directions and requirements on a licence in the light of the individual circumstances.

The contents of this policy document should not be interpreted as binding on the Commission; its licensing regime requires it to exercise discretion in each case and, accordingly, the manner in which it does so will be governed by the particular circumstances of any case in point.

Please be aware that the Commission cannot provide legal advice to applicants, who are urged to seek appropriate legal advice on their particular circumstances.

**(v) Other relevant guidance and information**

Licence applicants should consider the following guidance issued by the Commission in conjunction with this policy:

- 1 Supplement licensing policy for Class 3;
- 2 Training and Competence Framework;
- 3 Vetting guidance;
- 4 Business plan guidance;
- 5 Licensing Procedure; and
- 6 Guidance Note on Outsourcing / Delegation of Functions.

Documents 1- 5 can be found under the “becoming a regulated entity” tab on the Commission’s website. Document 6 can be found in the handbook relating to the relevant class of regulated activity. The handbooks are located under the “being regulated” tab on the Commission’s website.

**(vi) The licence application process and review of decisions**

Licence applicants are required to submit a completed application form with all necessary supporting documentation, including a business plan.

The Commission’s current published service standard for processing an application, from receipt of a fully completed application to a hearing by the Commissioners, is 3 months. However this service standard can only be met if all the required information is provided when the form is submitted. The Commission cannot be held responsible for delays arising from the submission of incomplete or inaccurate forms.

If the full licence application process, from receipt of the application form to the issue of a licence, is not completed within 6 months due to outstanding items from the applicant, then the Commission may require a new application to be made, including all relevant supporting documentation (e.g. refreshed business plan and financial information).

Once an application has been determined, the applicant has a period of three months to fulfil any licensing conditions. If the conditions are not met and a licence is not issued within this period, the Commission may require a new application to be made.

Where a new application has to be submitted, the relevant application fee will be payable.

The Commission would normally expect a licenceholder to commence business within 6 months of the date of the licence unless the Commission has agreed otherwise in writing. In view of this, a licenceholder who has not commenced regulated activities within 4 months of the date of grant of its licence must inform the Commission. Failure to commence business in a timely manner could result in solvency or competence issues which may lead to suspension or revocation of the licence.

Further information on the licence application procedure, and how an aggrieved party can seek a review of licensing decision, can be accessed from the Commission's Licensing Procedure on the website.

**(vii) Extensions to licences**

Where a current licenceholder wishes to extend their licence to cover any significant new business activities the Commission will require a new application form to be submitted and the applicant would undergo the full licensing process. This applies if the new business activity falls within a different class of regulated activity and may also apply if the new activity falls within the same class of regulated activity already held by the licenceholder. Discretion will be exercised based on the level of disparity between the current and proposed classes of regulated activity.

**(viii) Class 4 regulated activities**

The Commission expects licence applicants applying to carry on regulated activities falling within Class 4 to offer a full range of services including company management and administration. The Commission will not licence a business that only offers sales of companies or provides premises for use as a registered office.

## PART I - THE COMMISSION'S "FIT AND PROPER" CRITERIA

### I.1 General

I.1.1 The Commission's "fit and proper" test applies to the business as a whole and to the individuals responsible for the management and control (including owners) of the business and key persons.

Before granting a licence the Commission must be satisfied that a licence applicant, and persons associated with it, are fit and proper persons to undertake the regulated activity. This part of the document sets out the criteria the Commission will normally apply in assessing whether a person is "fit and proper".

The fit and proper test is both an initial test at the time of granting a licence and a continuing test in relation to the conduct of the regulated activities. The Commission may suspend or revoke a licence if a licenceholder does not continue to satisfy the fit and proper criteria.

The onus is on the licence applicant and relevant individuals to satisfy the Commission that they are fit and proper, rather than the Commission to prove that the applicant is not fit and proper.

I.1.2 In assessing the fitness and propriety of a licence applicant the Commission considers the following:

- (a) the integrity, competence, financial standing, structure and organisation of the licence applicant;
- (b) the integrity, competence and financial standing of any controller, director or key person of the licence applicant; and
- (c) the description of the business the applicant proposes to carry on.

I.1.3 When considering licence applications, the Commission makes an assessment of the ability of the applicant, once licensed to comply with:

- the FSA 2008;
- the Rule Book;
- the Anti Money Laundering Code for the time being in force and any guidance issued by the Commission on the requirements under that Code; and
- where relevant, the [Collective Investment Schemes Act 2008](#) and any applicable regulations and orders made under it.

I.1.4 A licence applicant's business should be structured and carried on in such a way that it meets the "fit and proper" test. A licence applicant must demonstrate to the Commission that -

- its systems, controls and resources are adequate and appropriate for the regulated activities it wishes to conduct; and
- it has an honest and fair attitude in its dealings with clients and others.

I.1.5 Serious or repeated breaches of legislation or codes of conduct in the Island, or in another jurisdiction by an applicant, its directors, key persons or controllers, may be considered as evidence of lack of competence and/or integrity.

## **I.2 A “not fit and proper” direction**

- I.2.1 The Commission may issue a direction to an individual proposed as a controller, director or key person of an applicant or licenceholder if it has reasonable grounds for believing that the individual is not a fit and proper person<sup>1</sup>. Where an individual is already a director, key person or controller of a licenceholder, if that individual’s conduct gives the Commission grounds to believe that he or she is no longer a fit and proper person, the individual may be directed to discontinue acting in that role<sup>2</sup>. In these circumstances, the applicant or licenceholder has a duty to take reasonable care not to appoint or continue the appointment of an individual in contravention of the direction.
- I.2.2 Where the Commission has grounds to believe that activities or circumstances are prejudicial to a relevant person’s fitness and propriety the Commission may issue a warning notice<sup>3</sup>. A warning notice may (but need not) propose that the person take remedial action or request the person to propose remedial action.
- I.2.3 Conduct which, on its own, is not sufficiently severe to demonstrate a lack of fitness and propriety may, cumulatively with other behaviour, lead to a not fit and proper direction. As such the Commission may take account of the cumulative effect of a licence applicant’s conduct.

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<sup>1</sup> s.10(1) Financial Services Act 2008

<sup>2</sup> s.10(2) Financial Services Act 2008

<sup>3</sup> s.11 Financial Services Act 2008

## PART II - STRUCTURE AND ORGANISATION OF THE LICENCE APPLICANT

### **2.1 New business start ups and track record**

- 2.1.1 In licensing any new business, the Commission will assess the likely potential risk to customers' interests, as well as any potential reputational risk to the Isle of Man as an international finance centre.
- 2.1.2 A licence applicant is expected to demonstrate a proven track record in the conduct of the regulated activity for which it seeks a licence. This may relate to the applicant either in its own right (for example, where it is already licensed to carry on the same or similar regulated activities in another jurisdiction), or as part of a group that includes entities licensed to carry on that class of regulated activity.
- 2.1.3 A licence applicant should restrict its activities to the activities which it is licensed to conduct and other wholly incidental activities. Where a licence applicant is permitted to conduct other activities, the Commission will consider how it conducts that unregulated business, as any lack of integrity or competence in that regard may affect its conduct of the regulated activities.
- 2.1.4 An entirely new start-up deposit taking business would not be permitted because of the inherent regulatory risk to depositors in allowing a deposit taking business without any track record to take deposits.
- 2.1.5 The Commission may consider applications for a licence to carry on some regulated activities falling within Class 2 (investment business), Class 3 (services to collective investment schemes), Class 4 (corporate services), Class 5 (trust services) or Class 6 (money transmission services) even though the applicant has no track record itself, and is not part of a group with a track record, provided that key persons associated with the application have a proven track record as individuals at a senior level in a relevant licensed business. Such operations may also have inherent risks and will be considered accordingly. **The specific considerations relevant to licences for regulated activities falling within a particular class in respect of track record and new business start-ups are set out in Appendix 2, Table B.**

### **2.2 Structure**

- 2.2.1 The Commission expects the ownership structure of a licence applicant to be as simple and transparent as possible. **The specific considerations relevant to licences for regulated activities falling within a particular class in respect of business structures are set out in Appendix 2, Table A.**
- 2.2.2 The licence applicant's structure should enable the Commission to identify:
- the ultimate beneficial owners of the business;
  - the individuals who exercise control over the appointment of the management team (directors and controllers);
  - the management team; and
  - key persons.

If an ownership structure is unduly complex and/or lacks transparency, the licence applicant must explain and justify the rationale for having such a structure.

2.2.3 A licence applicant must be publicly transparent about its ownership structure<sup>4</sup> irrespective of whether this is required under company law. See 2.3.2. for details of public disclosure that is expected for companies under the Companies Act 2006.

2.2.4 As the exercise of options over shares in the capital of a company may impact on the controlling interests in the company's ownership, the Commission will expect any existing options to be notified to it and may also wish to look at the terms of any such options.

## **2.3 Licence applicants which are part of larger groups**

2.3.1 Where the licence applicant is part of a group the Commission reserves the right to ask for information on the other group entities.

2.3.2 A licence applicant authorised to carry on Class I activities (deposit taking) which is incorporated in the Island and part of a larger group, is required to supply the Commission with a letter of comfort from its parent, or immediate owner if appropriate. The Commission may require that the letter of comfort is renewed from time to time.

2.3.3 The letter of comfort should record acknowledgement from the deposit taker's parent or immediate owner that it bears a responsibility, over and above any statutory obligations, for the continuing financial viability of the licence applicant. The letter of comfort is required to be in a form that is acceptable to the Commission.

2.3.4 In the case of a branch, written confirmation is required from the licence applicant's head office that it accepts full responsibility for the liabilities of the branch.

2.3.5 A licence applicant which is authorised to carry on business other than Class I activities (deposit taking) may be required to supply the Commission with a letter of comfort from its parent or immediate owner. The Commission may require that the letter of comfort is renewed from time to time.

## **2.4 Licence applicants which are companies under the Companies Act 2006**

2.4.1 The Commission will not grant a licence to carry on regulated activities falling within Class I (deposit taking) to a company incorporated or registered under the Companies Act 2006.

The restriction on using 2006 Act companies for deposit taking licenceholders is principally because the Commission does not consider it appropriate for such a licenceholder to be able to reduce its capital without more stringent safeguards being in place than those contained in the 2006 Companies Act.

2.4.2 The Commission may grant a licence to a 2006 Act company to conduct classes of regulated activity other than Class I; however, to ensure that the licenceholder provides the same level of public disclosure as applies to a 1931 Act company, the licence will be subject to the following licence conditions:

“The licenceholder shall, at all times:

- i maintain in force elections under section 203 (filing of the register of members) and section 204 (filing of the register of directors) of the Companies Act 2006 (“the Act”) and shall comply with the requirements

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<sup>4</sup> There is a statutory obligation for a 1931 Act company to disclose certain information on the public record held by Companies Registry. However, the equivalent regime for a 2006 Act company is elective

- of the Act in respect of such elections;
- ii have only natural persons as directors;
- iii have at least two directors; and
- iv maintain up to date copies of the minutes of its Board meetings and members' meetings either at the licenceholder's business premises on the Isle of Man or at the office of its registered agent."

2.4.3 Auditor liability – if an auditor of a licenceholder which is a 2006 Act company has capped liability it must not be capped below the level of PII cover needed to comply with the requirement at rule 5.2 (2)(c) of the Rule Book.

## 2.5 Sole Traders

2.5.1 The Commission will only consider applications from sole traders for a licence to act as a Professional Officer undertaking Class 4 (corporate services) and/or Class 5 (trust services) activities.

2.5.2 Once licensed the Rule Book will apply to Professional Officers in a way that is consistent with the nature of the regulated activities undertaken. The rules for Class 4 and/or Class 5 will apply, as relevant, except where:

- there is an application rule that specifically excludes Professional Officers;
- the relevant activity is not undertaken; or
- the rules are only relevant to a body corporate or a business that employs staff.

2.5.3 The Commission would not normally expect Professional Officers to hold clients' money.

## 2.6 Ownership by a Trust

2.6.1 The Commission will not normally grant a licence to carry on regulated activities falling within Class 1 (deposit taking) where the licence applicant has a trust in its ownership structure.

2.6.2 The Commission may grant a licence to carry on regulated activities falling within Class 2 (investment business), Class 3 (services to collective investment schemes), Class 4 (corporate services), Class 5 (trust services) or Class 6 (money transmission services) where the licence applicant has a trust in its ownership structure, but only where the Commission can look through the trust and identify those persons who control and/or exercise significant influence over the licence applicant.

However, the Commission will not normally grant a licence to carry on regulated activities falling within paragraphs (3) or (4) of Class 3 (services to collective investment schemes) as a trustee or fiduciary custodian of authorised or full international schemes where the licence applicant has a trust in its ownership structure.

2.6.3 In order to consider such an application the Commission will need to examine the deed of trust or other document relating to the establishment of the trust and any other documents it considers relevant (for example, the settlor's letter of wishes, deeds of appointment etc). In addition, the licence applicant must provide full details of the rationale and commercial reasons behind the use of the trust in its ownership structure and justify the use of a trust structure.

2.6.4 The licence applicant must satisfy the Commission that all “Influential Parties” in respect of the trust meet its fitness and propriety criteria. For this purpose, “Influential Parties” are:

- the trustee(s) of a trust which owns a licence applicant, whether as the holder of shares in the capital of the applicant, or otherwise; and
- any person to whom the trustee(s) turn for guidance, whose views the trustee(s) seek or whose advice they adopt, or to whom they are obliged, instructed or requested to turn for advice or instructions, or in accordance with whose directions or instructions the trustee(s) are accustomed to act in relation to the licence applicant, its administration or its ownership, other than a person who gives advice in a professional capacity only; and possibly,
- the settlor, protector and beneficiaries of the trust, depending on their formal powers and/or level of influence over the trustees.

## 2.7 Branches

2.7.1 The Commission will not grant a licence for the establishment of a branch unless the relevant head office is licensed to conduct the relevant regulated activity or activities in another jurisdiction which has licensing and regulatory standards equivalent to those in the Isle of Man. In making an assessment of the jurisdiction the Commission may contact the relevant regulatory authority and have regard to any published reports on the jurisdiction by the IMF and in particular assessments related to the supervision of relevant regulated activities and compliance with FATF standards.

2.7.2 In addition to the requirements above, in the case of a branch which undertakes regulated activities falling within Class I (deposit taking), the Commission will not grant a licence to the deposit taking branch unless it is satisfied that:

- the regulator of the relevant Head Office, is prepared to exercise consolidated supervision with the Commission; and
- this consolidated supervision includes consideration of capital adequacy.

2.7.3 The Commission appreciates that the level of autonomy granted to the branch in the Isle of Man by its head or principal office may depend upon the approach and structure of the relevant group (for example, the individuals with effective powers and responsibilities in relation to the branch’s operation may be employed in the branch or may include individuals in the head office). Whilst the Commission will apply the fit and proper test to branches at the same standard as other applicants, it may modify how that test is satisfied in relation to the particular circumstances of the case.

2.7.4 The Commission must be satisfied as to the fitness and propriety of the individuals who are employed in the branch in key person positions.

Where the controllers and key persons relevant to the operation of the branch include individuals whose primary responsibilities relate to the branch’s head office, the Commission may accept those individuals as fit and proper without further vetting, if it is satisfied that they have been approved by the regulatory authority which supervises the head office to act in their current capacity in both the head office and the branch.

The Commission will vet persons in the head office who have a direct responsibility for the branch or who will be overseeing the work of the branch as a key person.

## **2.8**      **Real presence**

- 2.8.1      It is a fundamental requirement that a licenceholder should not be a mere shell and as such a licence applicant should establish a “real presence” in the Isle of Man. An applicant can demonstrate real presence by satisfying the Commission that the business’s centre of activity will be in the Isle of Man.
- 2.8.2      If the licence applicant is an Isle of Man incorporated company, real presence in the Isle of Man should be demonstrated by the company’s management and control being in the Island.
- 2.8.3      A Professional Officer must be resident in the Isle of Man and carrying on his regulated business in or from the Island.
- 2.8.4      A branch of a company incorporated in another jurisdiction, must demonstrate real presence by registering as a foreign company that has established a place of business in the Isle of Man (under Part XI of the Companies Act 1931 – “F Register”). The centre of regulated business should be in the Isle of Man and there should be a sufficient degree of local management and control to ensure that there is accountability in the Island for the conduct of the regulated activities. There should be 2 Isle of Man resident officers.
- 2.8.5      The Commission would expect all records relating to the business to be located in the Isle of Man or be accessible from the Isle of Man without recourse to third parties. (This is subject to any outsourcing, or branch, arrangements for which the Commission might give consent.) This includes minutes of directors’ and shareholders’ meetings and, in respect of a licenceholder which is a 2006 Act company, the Commission shall apply a licence condition that the company’s minute books are maintained in the Isle of Man (either at the licenceholder’s business premises or at the office of the company’s registered agent).
- 2.8.6      A licence applicant is expected to have sufficient staff to undertake the activities detailed in the application. The Commission will consider each application on a case by case basis as the requirement will vary according to the scale and complexity of the proposed business.

## **2.9**      **Managed businesses**

- 2.9.1      Although the Commission will not licence a business that is a mere shell without real presence in the Isle of Man, it may grant a licence to an applicant which on its own does not fully meet the “real presence” test providing the business of the applicant is to be managed in the Isle of Man by another licenceholder. **See Appendix 2, Table A for details of which classes of regulated activity may be managed.**
- 2.9.2      In assessing the fitness and propriety of a “managed” applicant, the Commission will apply its usual licensing policy in respect of the managed business itself and in addition, will pay special attention to the arrangements under which the proposed manager will carry out its management functions. These arrangements will need to be set out as a formal agreement between the two parties and the Commission will wish to consider the terms of such an agreement in connection with the application.

2.9.3 In considering a licence application for a managed business, the Commission must be able to establish that it will be able to exercise sufficient regulatory control over the managed licenceholder. The Commission will look at the functions and services provided by the managed entity's Group (if applicable) and by the Class 3(9) or Class 7 licenceholder to the entity as well as the competence of the managed entities directors and controllers.

2.9.4 The Commission would expect to see a board of the managed entity constructed with a skill set, experience and track record which is appropriate to the regulated activity being undertaken. Since directors of the managed entity may include directors of the licenceholder providing management or administrative services to them the Commission would expect that appropriate arrangements are in place with regard to the following:

- management of conflicts of interest between the managed business, the Class 7 / Class 3(9) licenceholder, the role of directors acting for both entities and the fund(s) being managed;
- reporting by the Class 7 / Class 3(9) licenceholder to the managed entity about services provided;
- maintenance of adequate corporate governance and risk management arrangements by the managed entity; and
- monitoring/oversight by the managed entity of the services provided by the Class 7 / Class 3(9) licenceholder.

The Commission may require an independent non-executive director to be appointed to the Board of a managed entity, if deemed necessary.

2.9.5 Although the managed business will rely on the proper exercise of the functions of the manager, the managed operation itself will ultimately remain accountable to the Commission for the regulated activities it undertakes. Thus, although it would be appropriate for the manager to provide the staff and premises for the managed business, major operational decisions must be made by the directors of the managed business itself.

2.9.6 All records relating to the managed operation must also be located in the Isle of Man. This includes minutes of directors' and shareholders' meetings (see 2.7.5 above).

2.9.7 **Class 7 – Management or administration services to a licenceholder other than for Class 3 activities**

A licence applicant who wishes to conduct management or administration services for another licenceholder must:

- be authorised to carry on regulated activities falling within Class 7;
- also be authorised to carry on regulated activities falling within the relevant class i.e. only a deposit taker can manage another deposit taker;
- have a track record in the relevant regulated activity; and
- be able to demonstrate competence and experience to act as manager of the managed entity (including the provision of adequate systems, controls and resources, and where appropriate segregation from its main business) to the Commission's satisfaction.

The Commission does not consider that Class 7 should apply to all management and administration services provided to licenceholders as this may capture outsourcing arrangements. The Commission is primarily seeking to regulate management or administration of licenceholders under Class 7.

The Commission takes into account the following indicators when deciding whether “management” or “administration” of a licenceholder is taking place:

- the whole or substantially the whole of the regulated activity of the licenceholder is operated or arranged by the manager/administrator;
- all or nearly all of the staff who carry out the services are supplied, directly or indirectly by the manager/administrator (possibly with one or two staff retained by the licenceholder being managed for sales purposes or as a quality check).
- all or nearly all of the staff who carry out the services (if not supplied by the manager/administrator) are under the management or direction of the manager/administrator.

The Commission understands that there are lots of situations where there are many common staff between two group companies or where there is one employment company by which all the staff are contracted. Generally, situations such as these would not be regarded as “management” or “administration” for the purpose of Class 7.

The Commission would generally regard a licenceholder as “managed” by another licenceholder if at least half of its Board is made up of persons nominated or provided by the manager. In practice, licenceholder to licenceholder agreements for “management” will usually include elements of “administration” as well. Class 7 licences for these arrangements would refer to “management and administration”.

The Commission would not normally regard licenceholders as being managed or administered for the purposes of Class 7 where the licenceholder being managed and the provider of management or administration services are both part of the same group. However, in some circumstances one group company may be providing management or administration services to another group company. The Commission would look at the totality of the arrangements when deciding whether “management” or “administration” of another group company is taking place. Some factors to consider include:

- the group is headquartered outside the Island; or
- the licenceholder being managed or administered is a branch or subsidiary of a group company, which has its main operations outside the Island and conducts similar regulated activities outside the Island.

## **2.10 Overseas businesses**

2.10.1 The Commission considers that the establishment of an office or subsidiary by an Isle of Man business for the purpose of carrying on any regulated activities outside the Island (“overseas business”) may impact on the fitness and propriety of a licence applicant. Therefore, where a licence applicant has already established an overseas business or wishes to do so in future, the level of control the applicant has, or will have, over the operation of the overseas business would be relevant to its licence application. The Commission’s prior consent is required for the establishment of an office or subsidiary<sup>5</sup>.

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<sup>5</sup> Rule 7.8 of the Financial Services Rule Book 2008

2.10.2 The Commission would also consider the potential risks associated with the establishment and operation of the overseas business and any detrimental effect the overseas business may have on the Isle of Man operation and on the Island's reputation. For these reasons, the establishment or continuance of the overseas business will be taken into account in assessing the applicant's fitness and propriety.

## **2.11 Representative offices**

2.11.1 Any office in the Isle of Man that represents, or holds itself out as representing, an off-Island deposit taking business is required to hold a licence authorising it to carry on regulated activities falling within Class 1.<sup>6</sup>

2.11.2 An off-Island non-deposit taking business considering the establishment of a "representative office" in the Isle of Man, should consider whether the activities to be undertaken by the representative office are regulated activities under Isle of Man legislation. If they are, the representative office will be required to obtain a licence authorising it to carry on the relevant class of activity before it commences business. In this context, the Commission's policy relating to "real presence" should be noted (see paragraph 2.7 above).

## **2.12 Changes to ownership structure once a licence has been granted**

2.12.1 The Commission considers an application for a licence on the basis of the ownership structure in place at the time the application is made. Any subsequent change to that structure may alter the Commission's assessment of the licenceholder as a fit and proper person and should therefore be notified to the Commission (see rules 7.4 and 7.5 of the Rule Book).

### **2.12.2 Options**

On an ongoing basis, a licenceholder must notify the Commission of any proposed pledge of, offer of options over or options granted in respect of any shares in the capital of the company.

### **2.12.3 Sole traders and partnerships**

The Commission will only licence businesses structured as corporate entities and therefore will not consider applications from sole traders or partnerships.

Where an existing sole trader or partnership licenceholder proposes to re-establish its business as a body corporate a new licence application will be required because structuring as a body corporate would be an entirely new legal entity not just a change of structure. To encourage existing sole trader and partnership licenceholders to incorporate, no application fee will be charged for the relevant licence application.<sup>7</sup>

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<sup>6</sup> s.7 Financial Services Act 2008

<sup>7</sup> Financial Services (Fees) Order 2009

## **PART III - INDIVIDUALS RESPONSIBLE FOR MANAGEMENT AND CONTROL**

### **3.1 Directors, controllers and key persons**

3.1.1 All individuals with responsibility for the management and control of the business, and key persons within the business, must satisfy the Commission that they are fit and proper persons. Before proceeding with any new key appointment or, in respect of controllers, permitting an individual to acquire a significant interest in the business, a licenceholder should obtain confirmation of no objection from the Commission.

3.1.2 The compliance officer, the MLRO, deputy MLRO, company secretary, financial controller (or equivalent role), head of operations and the Isle of Man resident officers will always be treated as key persons. Other persons who have significant powers or responsibilities within the business would also be regarded as key persons.

In respect of a licence to carry on the regulated activities falling within Class 4 (corporate services) or Class 5 (trust services), all individuals who act as a director (including as a director of a corporate officer or corporate trustee), a secretary of a client company or a trustee, protector or enforcer of a trust in relation to the regulated activities undertaken by the licenceholder, would be treated as key persons.

3.1.3 The directors, the chief executive and the controllers, (and while any partnership licenceholders remain the partners of such partnerships) whether or not their functions are directly related to the business's regulated activity, are required to be fit and proper persons as an on-going requirement.

In respect of the management and control of the business, "directors" include anyone in accordance with whose instructions one or more of the directors are accustomed to act. A licence applicant must have a minimum of two directors and all the directors must be natural persons, even where corporate directors are permitted by statute.

3.1.4 Where one or more nominees hold shares in the capital of a licence applicant, the relevant nominee agreement evidencing the identity of the beneficial owners of the shares must be disclosed to the Commission. The Commission will apply the fit and proper test to both the nominee shareholders and the beneficial owners of the shares.

3.1.5 Individuals must submit vetting forms and undergo vetting to enable the FSC to assess whether they are fit and proper. In addition, the FSC may invite the individual to attend a personal interview to clarify any issues arising and/or to form an opinion regarding an individual's competence and/or integrity

Please refer to "Becoming a Regulated Entity/Vetting Forms and Guidance" on the FSC's website to assist with determining which form needs to be submitted.

3.1.6 Acting as the registered agent of a 2006 Act company is a regulated activity falling within paragraph (5) of Class 4 (corporate services). Therefore, a registered agent would not need to be separately vetted in relation to this role.

### **3.2 Separation of roles**

3.2.1 Unless the business is too small to make it practical to do so, the role of compliance officer should not be undertaken by an Isle of Man resident officer. In this way compliance control is separated from the day to day control of the business.

3.2.2 Unless the business is too small to make it practical to do so, the roles of managing director and company secretary must be performed by different individuals because a company secretary's functions include advising the Board in relation to good corporate governance.

3.2.3 The Commission would not expect a non-executive director of a licenceholder to hold any other office within that licenceholder.

### **3.3 Responsibilities**

3.3.1 The directors are expected to be cognisant with their statutory and common law duties and responsibilities and if they are the Isle of Man resident officers, of their responsibilities in respect of the day to day supervision of the licenceholder's activities.

3.3.2 The roles of Isle of Man resident officer must be undertaken by two competent professionals able to exercise real control over the day to day operations of the business in the Isle of Man. It is expected that the individuals will be either executive directors, employees of appropriate status or persons granted executive powers.

3.3.3 If a controller exercises influence over the day-to-day affairs of the applicant, he or she would also be expected to demonstrate competence in the same way as directors, Isle of Man resident officers and key persons.

### **3.4 Locums**

3.4.1 Where a licence applicant has a small number of internal staff it may be required to appoint a locum. A locum's function is to ensure that the provision of regulated activities can continue without interruption in the unexpected absence of key individuals within the licenceholder. Because of the nature of the role and functions of a locum, the Commission's prior approval of the locum arrangement is required (see rule 8.12).

3.4.2 In view of the level of competence necessary to take control of another licenceholder's business the Commission would expect the person proposed as locum to be another licenceholder. The locum must be licensed to undertake activities falling within the same class as the activities the licence applicant wishes to carry on.

Where a licence applicant proposes as its locum another applicant, the Commission's approval of the locum arrangement will be subject to the locum also being successful in its own licence application.

3.4.3 In the case of an application for a licence which authorises activities falling within Class 4 (corporate services) and/or Class 5 (trust services), the Commission would consider approving as an applicant's locum, an individual who has an acceptable track record as a director of a licenceholder or, subject to the other applicant being successful in its own licence application, an individual who is a director of another licence applicant.

3.4.4 In exceptional circumstances, the Commission may accept some other suitably qualified individual, provided that individual is able to demonstrate that he or she is a fit and proper person, capable of standing in for the licenceholder.

## PART IV - INTEGRITY

### 4.1 Integrity

- 4.1.1 To a large extent, the integrity of an applicant is a reflection of the individuals employed by or associated with the applicant. In assessing the integrity of a licence applicant or licenceholder and its directors, controllers and key persons, the Commission will consider whether any of their past actions or conduct indicate a lack of integrity. The Commission will take account of all relevant circumstances, on a case-by-case basis. **A list of matters the Commission may have regard to can be found at Appendix 3.**
- 4.1.2 The Rehabilitation of Offenders Act (Exceptions) Order 2001 allows the FSC to take account of convictions which would otherwise be treated as spent under the Rehabilitation of Offenders Act 2001. As part of the vetting procedure, the directors, controllers and key persons of an applicant are required to disclose any spent convictions to the FSC. The FSC will consider, on a case-by-case basis, whether a spent or previous conviction is relevant to its current assessment of whether an individual is fit and proper.
- 4.1.3 In cases where legal or disciplinary investigations or proceedings are in progress or pending, it would not be appropriate for the Commission to prejudge the outcome (either in favour of or against the applicant, its directors, controllers or key persons); therefore, the Commission may not be able to form a view as to the fitness and propriety of the individual or organisation concerned until the matter has been concluded. In such cases, the Commission may consider it appropriate to defer making a decision on the licence application. Where this is the case, the Commission will keep the matter under regular review and seek to ensure that a decision is made as soon as possible.
- 4.1.4 Individuals responsible for the management and control of a licence applicant's business should ensure that, by their conduct and by providing appropriate supervision and training to others within the organisation, the applicant's business is conducted with integrity.
- 4.1.5 A licence applicant and all connected individuals should co-operate in an open and honest manner with the Commission or any other regulatory body to which they are accountable and should keep them promptly informed of anything relevant to the regulator's task. A failure to do so will be taken into account by the Commission in considering that person's integrity.

This would include the failure to complete any form or supply information required in respect of a licence application or as a licenceholder in an honest manner, or the omission of any relevant material. The provisions in s. 40 of the FSA 2008 in respect of false statements should be noted.

## **PART V - COMPETENCE**

### **5.1 Competence**

5.1.1 A licence applicant must demonstrate that it is competent to undertake the relevant class of regulated activities including, where appropriate, detailed knowledge of the structure, purpose and risks of the products associated with the activity. An applicant's competence depends on the individuals in the organisation holding the relevant qualifications, and/or having sufficient experience and being appropriately supervised and trained, to perform their particular functions competently and to fulfil their responsibilities in relation to the regulated activities.

5.1.2 The licence applicant's organisational structure must enable the Commission to identify the individuals, whose competence in relation to their particular role and responsibilities within the business would jointly be indicative of the overall competence of the applicant to undertake the regulated activities. The role of controllers and their influence over the running of the business will also be taken into account.

5.1.3 Directors, key persons and, if relevant, controllers, who do not hold relevant academic and/or professional qualifications, must be able to demonstrate that they have accumulated sufficient knowledge of the regulated activities in relation to their responsibilities through relevant work experience, normally over a period of at least five years.

The Commission will use its discretion, on a case-by-case basis, in its assessment of competence and may direct that an individual should successfully complete a course of study or achieve a qualification relevant to his or her responsibilities within a specified period of time.

5.1.4 The Commission guidance entitled "Training and Competence Framework", provides guidance on the specific training and competence requirements relevant to licences for regulated activities falling within a particular class and also in respect of the particular role or functions of key person within the organisation. This is available on the Commission's website [www.fsc.gov.im](http://www.fsc.gov.im), under "becoming a regulated entity/Training and Competence".

5.1.5 In assessing the competence of a licence applicant, the particular classes of regulated activities it proposes to undertake, as well as the quantity and type of business and the jurisdictions in which it will be offering its services, will be relevant.

5.1.6 Appropriate business resumption/contingency arrangements are relevant to a business's competence to continue in the face of an unexpected event that may disrupt its normal operations. A licenceholder will be required to maintain business resumption/contingency arrangements appropriate to the nature and size of its business (see rule 8.11).

**The specific considerations relevant to regulated activities falling within a particular class in respect of new business and track record, including the competence criteria, are set out in Appendix 2, Table B.**

## **PART VI - FINANCIAL STANDING**

### **6.1 Solvency**

6.1.1 Solvency is not merely a matter of meeting liabilities as they fall due, but of maintaining adequate financial resources to enable a licenceholder to survive periods of market weakness and slack trading conditions. The control of the financial risks of the business and proper care for customers' money and assets are also important considerations. The Commission's specific financial resources requirements for each class of regulated activity are set out in Part 2 (Financial Resources and Reporting) and Schedule 2.2 of the Rule Book.

6.1.2 Taking account of contingent and prospective liabilities, a licence applicant must be, and be likely to remain, a going concern. Confirmation of this must be provided by the directors, supported, if possible, by a report from the applicant's auditor or reporting accountant. While any partnership licenceholders remain, the same applies as an on-going requirement to the partners of such partnerships.

If the applicant is part of a group the Commission may require consolidated group accounts to be submitted.

6.1.3 To establish a licence applicant's track record of financial stability and the ability to meet the going concern requirement, the Commission will also require a copy of the applicant's past three years' annual financial statements audited, if such audit was carried out when the accounts were prepared, in accordance with the relevant legal requirements. If less than three years have elapsed since the applicant's incorporation, it will be required to submit its annual financial statements for the relevant number of years.

6.1.4 In addition, the business plan submitted by licence applicant must include considered and realistic financial projections for the next two years including clear explanation of the assumptions used. An applicant that is a new business start-up must demonstrate convincingly the financial viability of its business proposals.

The Commission will require evidence that funds have been provided to meet the share capital requirement and financial resources requirement, for example evidence of funds being lodged to pay up share capital.

6.1.5 The FSC will consider the solvency of the directors, controllers and key persons of a corporate licence applicant and also Professional Officer applicants. A credit check will be undertaken on these individuals. If the individual is not resident on the IOM a letter of good standing will be requested from the individual's bank. The areas the FSC will consider include whether that person has ever been declared bankrupt, is currently an undischarged bankrupt or has been subject to any money judgement, which has not been satisfied in full. Any money judgement obtained against an individual must be disclosed within the vetting forms. The FSC considers the possible impact of such circumstances on the individual's fit and proper status on a case-by-case basis.

## **6.2 Professional indemnity insurance cover**

- 6.2.1 As stated above, a licenceholder's business must be able to withstand the normal business risks associated with market conditions. In addition, any prudently run business should be able to withstand extraordinary risks. Licenceholders must mitigate the business's exposure to extraordinary risk by taking out adequate professional indemnity insurance ("PII").
- 6.2.2 PII cover should be appropriate to the nature and size of the business operation in compliance with Rule 8.54 of the Rule Book. The levels of cover that the Commission would consider appropriate for licences to carry on each class of regulated activity are set out in Schedule 8.2 of the Rule Book.

## **6.3 Ongoing requirements**

- 6.3.1 Licence applicants should note that there is an on-going requirement under the Financial Resources and Reporting Part (Part 2) of the Rule Book for a licenceholder to submit annual financial statements, which have been audited. The requirement for licenceholders that are companies to be audited applies irrespective of whether they are obliged to be audited or are exempt from audit under the relevant Companies Act.
- 6.3.2 The Commission will generally require existing licenceholders who are sole traders or partnerships to place a sum of money in a segregated bank account, which must be maintained free of any charge or encumbrance or right of set-off. The relevant amount of such bank deposit will be equivalent to the minimum net tangible asset requirement of that class of regulated activity. This does not apply to Professional Officers who are not subject to any financial resources requirements other than not being a bankrupt. The relevant minimum net tangible asset requirements are specified in Schedule 2.2 of the Rule Book.

### Key to Class 3 licensing requirements in the tables A, B and C of Appendix I

The tables set out in Appendix 2 apply to Collective Investment Schemes in accordance with the Key below. To use this Key

1. Select the class or classes of regulated activity being applied for;
2. Identify the types of scheme to which services will be provided and select the “highest letter” (A being the highest letter and E the lowest letter);
3. Use this letter to identify the licensing requirements in tables A and B.

| Regulated Activities for Collective Investment Schemes   | Type of Collective Investment Scheme |                            |  |                         |                               |
|--|--------------------------------------|----------------------------|--|-------------------------|-------------------------------|
|  | Authorised schemes                   | Full international schemes | Other prescribed classes of international scheme | Non Isle of Man schemes | Exempt or exempt-type schemes |
| Class 3(1) - Manager   | C                                    | C                          | C  | C                       |                               |
| Class 3(2) - Administrator   |                                      |                            | C  | C                       |                               |
| Class 3(3) Trustee   | A                                    | A                          | C  | C                       |                               |
| Class 3(4) - Fiduciary custodian   | A                                    | A                          | C  | C                       |                               |
| Class 3(5) - Custodian   |                                      |                            | C  | C                       |                               |
| Class 3(6) - Asset manager   | C                                    | C                          | C  | C                       |                               |
| Class 3(7) - Investment adviser  | C                                    | C                          | C  | C                       |                               |
| Class 3(8) - Promoter (where regulated promoter required)  |                                      |                            | D  | D                       |                               |
| Class 3(9) - Management or administration services to Class 3(1) and (2) licenceholders  | B                                    | B                          | C  | C                       |                               |
| Class 3(9) - Management or administration services to Class 3(6) and (7) licenceholders  | C                                    | C                          | C  | C                       |                               |
| Class 3(10) –Administration services to the manager or administrator of a scheme where that manager or administrator is located outside the Island |                                      |                            | C  | C                       |                               |
| Class 3(11) – Manager, administrator, trustee, fiduciary custodian or custodian to a CIS which is an exempt scheme or exempt type scheme           |                                      |                            |  |                         | E                             |
| Class 3(12) –Administration services to a person exempt from licensing* in relation to an exempt scheme or an exempt type scheme                   |                                      |                            |  |                         | E                             |

\* under section 4 of the Act by virtue of paragraph 3.2 of the Financial Services (Exemptions) Regulations 2008

Table A - Ownership and Management Structures

|         |   | Permitted structures  | Ownership by trust<br>(subject to para. 2.6) | May be a managed business   |
|---------|---|---|--|---|
| Class 1 | Deposit taker   | <p>Subsidiary company or branch<sup>8</sup> of deposit taker licensed as part of a major deposit taking group in another jurisdiction that applies regulatory standards equivalent to those applied to deposit taking institutions in the Isle of Man and is prepared to exercise consolidated supervision with the Commission.</p> <p>Overseas banks that wish to establish a presence through a branch<sup>8</sup> (rather than an Isle of Man incorporated subsidiary) and accept retail deposits must be banks of the highest standing and enjoy a "Support Rating" of "1" from at least one credit rating agency that is recognised by the Commission.</p> | Not generally permitted                      | Yes, provided it is part of a deposit taking group whose lead regulator applies regulatory standards equivalent to those applied to deposit taking institutions in the Isle of Man; and the lead regulator has no objection to the establishment of the managed business in the Island. |
| Class 2 | Financial Adviser<br>Investment Adviser to Retirement Benefits Schemes        | Company or branch <sup>8</sup> of company licensed in another jurisdiction to conduct relevant class of investment business   | May be permitted                             | No  |
| Class 2 | Discretionary Portfolio Manager<br>Custodian<br>Any Other Investment Business | <p>Company or branch<sup>8</sup> of company licensed in another jurisdiction to conduct relevant class of investment business</p> <p>Generally required to be part of larger Group</p>  | May be permitted                             | May be permitted in respect of certain activities only  |
| Class 2 | Stockbrokers  | <p>Company</p> <p>Branch<sup>8</sup> of stockbroker authorised by the UKFSA</p> <p>Branch company licensed in another jurisdiction to conduct relevant class of investment business</p> <p>Generally required to be part of larger Group</p>  | May be permitted                             | No  |
| Class 3 | Collective Investment Schemes Licensing type A                                | Subsidiary company or branch <sup>8</sup> of deposit taker licensed in another jurisdiction.  | Not generally permitted                      | Yes, provided it is part of a deposit taking group whose lead regulator applies regulatory standards equivalent to those applied to deposit taking institutions in the Isle of  |

<sup>8</sup> In the case of a branch, subject to its meeting the Commissions "fit and proper" requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

|                      |   | <b>Permitted structures</b>  | <b>Ownership by trust (subject to para. 2.6)</b>           | <b>May be a managed business</b>   |
|----------------------|---|--|--|--|
|                      |   |  |  | Man; and the lead regulator has no objection to the establishment of the managed business in the Island. |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type B</b>   | Company or branch <sup>8</sup> of company licensed in another jurisdiction to conduct relevant regulated activities<br><br>Expectation is that this will be part of larger Group | May be permitted   | No   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type C</b>   | Company or branch <sup>8</sup> of company licensed in another jurisdiction to conduct relevant regulated activities<br><br>Generally required to be part of larger Group         | May be permitted   | May be permitted in respect of certain activities only   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type D</b>   | Company or Branch <sup>8</sup> of company licensed in another jurisdiction to conduct relevant regulated activities in an acceptable jurisdiction.                               | May be permitted   | No   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type E</b>   | Company or Branch <sup>8</sup> of CSP licensed in another jurisdiction   | May be permitted   | Yes  |
| <b>Class 4</b>       | <b>Corporate services</b>                               | Company or Branch <sup>8</sup> of CSP licensed in another jurisdiction   | May be permitted   | Yes  |
| <b>Class 4 and 5</b> | <b>Professional Officer</b>                             | Sole trader  | Not applicable   | Not applicable   |
| <b>Class 5</b>       | <b>Trust Corporation</b>                                | Company  | May be permitted   | No   |
| <b>Class 5</b>       | <b>Trust services</b>                                   | Company or branch <sup>8</sup> of TSP licensed in another jurisdiction   | May be permitted   | Yes  |
| <b>Class 6</b>       | <b>Money Transmission Services</b>                      | Company or branch <sup>8</sup> of company licensed in another jurisdiction to conduct relevant regulated activities  | May be permitted   | No   |
| <b>Class 7</b>       | <b>Management and administration of a Licenceholder</b> | As per the type of business to which services are provided   | As per the type of business to which services are provided | As per the type of business to which services are provided   |

<sup>8</sup> In the case of a branch, subject to its meeting the Commissions “fit and proper” requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

Table B - Track Record

|         |  | Track Record/New Business Start-up   |
|---------|--|--|
| Class 1 | Deposit taker  | A new, start-up deposit taker would not be permitted.  |
| Class 2 | Financial Adviser<br>Investment Adviser to Retirement Benefits Schemes | New start-up firms permitted.<br>It is expected that any individual who advises customers about investment products will hold a relevant qualification <sup>9</sup> and have a proven track record (a minimum of 3 years experience).  |
| Class 2 | Discretionary Portfolio Manager  | In some circumstances new start-up businesses may be permitted.<br>Portfolio managers should preferably be part of a group that can demonstrate a track record in a business similar to the business the applicant proposes to conduct in the Isle of Man. Applicants should normally be institutions of proven quality and it is expected that individuals who will act as the applicant's portfolio managers, directors, Isle of Man resident officers and compliance officer will have a proven track record (relevant qualifications and experience <sup>9</sup> ).<br>A portfolio manager will be expected to hold a relevant qualification <sup>9</sup> . Back office and administration staff would only be expected to have relevant experience. Whilst there is no specific qualification requirement for those overseeing back office and administration staff, relevant experience is expected and relevant qualifications may be appropriate.  |
| Class 2 | Custodian<br>Any Other Investment Business                             | The Commission welcomes applicants which are part of a substantial group that can demonstrate a track record in an investment business similar to that which the applicant proposes to conduct in the Isle of Man (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards to the Isle of Man's or which is otherwise considered acceptable).<br>If the applicant is a new start-up business, the Commission will consider the application on its merits, taking into account all factors which it considers to be relevant, including the applicant's business plan, the track record and experience <sup>9</sup> of its key person and the types of funds it proposes to manage or administer, including the investors at whom the marketing will be aimed and the level of minimum subscriptions. The same considerations will apply in respect of a licenceholder's proposed change in controller. The Commission may impose conditions on any licence granted until the applicant's business has established a satisfactory track record.<br>All applicants must have staff with relevant experience <sup>9</sup> , who are able to demonstrate that they have adequate skills and knowledge in relation to their particular role and responsibilities. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved. |
| Class 2 | Stockbrokers   | The Commission would normally expect stockbrokers to be part of a group that can demonstrate a track record in that type of investment business. A "proven track record" is deemed to be at least 5 years in a jurisdiction with regulatory standards deemed to be appropriate by the Commission.  |

<sup>9</sup> See Training and Competence Framework

|                      |   | <b>Track Record/New Business Start-up</b>  |
|----------------------|---|--|
|                      |   | A stockbroker will be expected to hold a relevant qualification <sup>9</sup> .   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type A</b>       | <p>A subsidiary or a branch of a deposit taker licensed in another jurisdiction that applies regulatory standards equivalent to those applied to deposit taking institutions in the Isle of Man.</p> <p>A new start-up deposit taker would not be permitted.</p>   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type B and C</b> | <p>The Commission welcomes applicants which are part of a substantial group that can demonstrate a track record in an investment business similar to that which the applicant proposes to conduct in the Isle of Man (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards to the Isle of Man's or which is otherwise considered acceptable).</p> <p>If the applicant is a new start-up business, the Commission will consider the application on its merits, taking into account all factors which it considers to be relevant, including the applicant's business plan, the track record and experience<sup>9</sup> of its key persons and the types of funds it proposes to manage or administer, including the investors at whom the marketing will be aimed and the level of minimum subscriptions. The same considerations will apply in respect of a licenceholder's proposed change in controller. The Commission may impose conditions on any licence granted until the applicant's business has established a satisfactory track record.</p> <p>All applicants must have staff with relevant experience, who are able to demonstrate that they have adequate skills and knowledge in relation to their particular role and responsibilities<sup>9</sup>. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved.</p> <p>*If a Class 3(1) or Class 3(2) licenceholder is a managed business the Commission does not expect it to employ its own staff. The Commission would, however, look at the functions and services provided by the Group (if applicable) and by the Class 3(9) licenceholder to the entity as well as the competence of its directors and controllers.</p> |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type D</b>       | <p>New start-up firms permitted.</p> <p>Applicants should also have a proven track record (a minimum of 3 years experience).</p>   |
| <b>Class 3</b>       | <b>Collective Investment Schemes Licensing type E</b>       | New start-up firms permitted provided the individuals wishing to establish the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications <sup>9</sup> ).  |
| <b>Class 4</b>       | <b>Corporate Services</b>                                   | New start-up firms permitted provided the individuals wishing to establish the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications <sup>9</sup> ).  |
| <b>Class 4 and 5</b> | <b>Professional Officer</b>                                 | The individual should have an appropriate level of experience (at least 5 years at senior level) and, preferably a relevant qualification <sup>9</sup> .   |
| <b>Class 5</b>       | <b>Trust Corporation</b>                                    | New start-up firms may be permitted provided the individuals wishing to establish the business have a proven track record (3 to 5 years relevant senior level experience in a Trust Corporation (TSP experience may also be relevant) and, preferably, also holding relevant qualifications <sup>9</sup> ) and, in addition, the applicant should have at least 5 directors and/or key persons who hold a relevant professional qualification and/or have relevant experience <sup>9</sup> . Where an individual does not hold a relevant qualification, a greater depth of experience at a senior level will be expected.   |

|                |   | <b>Track Record/New Business Start-up</b>   |
|----------------|---|---|
|                |   | In addition, the Commission would not generally permit a Trust Corporation to be a managed operation and would expect a Trust Corporation to be a company of substance and not a mere nominee.                  |
| <b>Class 5</b> | <b>Trust Services</b>                                   | New start-up firms permitted provided the individuals wishing to establish the business have a proven track record (holding relevant qualifications and/or 3 to 5 years relevant experience at a senior level). |
| <b>Class 6</b> | <b>Money Transmission Services</b>                      | New start-up firms permitted.   |
| <b>Class 7</b> | <b>Management and administration of a Licenceholder</b> | As per the type of business to which services are provided.   |

<sup>9</sup> See training and competence framework

## APPENDIX 3

### Matters the Commission may have regard to in determining an individual's or an organisation's integrity

The following are examples of matters the Commission may have regard to in determining an individual's or an organisation's fitness and propriety: -

- a conviction by a court, including a civil or military court, in the Island or in another jurisdiction, including a conviction that is "spent"<sup>10</sup>;
- any failure to comply with a direction or order of a court in the Island or in another jurisdiction;
- any criticism or adverse comment about the individual or organisation made by a court, tribunal or enquiry, in the Island or elsewhere, in the context of proceedings before it, including where the individual or organisation was called or attended voluntarily as a witness;
- a refusal by a regulator, whether in the Island or elsewhere, to licence the applicant to carry on the relevant regulated activity, or any activity similar to the relevant regulated activity;
- in respect of a controller, director or key person, a refusal of a personal application for approval by a regulator, whether in the Island or elsewhere, on the grounds that the individual was not considered a fit and proper person to act as a controller, director, chief executive or secretary of a deposit taking business, investment business, money transmission services or corporate or trust service provider;
- information received from law enforcement or other supervisory agencies under "gateways" equivalent to those established under section 31 of the FSA 2008;
- a disqualification under section 259 of the Companies Act 1931 (fraudulent trading), section 31 of the Companies Act 1982 (insolvent companies), section 26 of the Companies Act 1992 (unfit persons) or any equivalent legislation in any jurisdiction;
- expulsion from membership, a disciplinary finding against or any similar form of censure of an individual by his professional body;
- an adverse personal reference from a previous employer or professional body;
- disciplinary action taken by a previous employer or professional body; or
- failure to disclose to the Commission any matters relevant to the application, including giving incomplete or untruthful answers to the questions in the vetting forms.

This list is illustrative only and the Commission will also consider any other relevant matter in addition, or alternatively, to the matters listed.

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<sup>10</sup> By virtue of the Rehabilitation of Offenders Act (Exceptions) Order 2001, spent convictions must be disclosed to the Commission. Parking or speeding offences, in connection with the use or ownership of a motor vehicle, which were tried in a court of summary jurisdiction, are not, however, considered relevant and do not need to be disclosed.